

29



IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY

Fees Paid
Receipt No. No. VID 882 of 2007

WRIGHT RUBBER PRODUCTS PTY LTD (ACN 075384100)
Applicant

BAYER AG
First Respondent

BAYER AUSTRALIA LTD (ACN 000138714)
Second Respondent

CHEMTURA CORPORATION
Third Respondent

CROMPTON MANUFACTURING COMPANY, INC
Fourth Respondent

CHEMTURA AUSTRALIA PTY LTD (ACN 005225507)
Fifth Respondent

AMENDED APPLICATION UNDER PART IVA
OF THE FEDERAL COURT OF AUSTRALIA ACT 1976
(Order 73 rule 3)

1. This proceeding is brought by the Applicant as representative party.

1A. In this Amended Application:

"Rubber Chemicals" means the chemicals listed in Schedule 1. of the Amended
Statement of Claim;

PROCESSED

Filed on behalf of:

The Applicant

Prepared by:

Maurice Blackburn Cashman
Lawyers
Level 10, 456 Lonsdale Street
MELBOURNE VIC 3000

Solicitor's Code: 564
Tel: (03) 9605.2700
Ausdoc: DX 466 (Melbourne)
Ref: 27085601

"Rubber Compounds" means compounds of natural or synthetic rubber and other raw materials manufactured using Rubber Chemicals; and

"Rubber Products" means intermediate and/or finished products manufactured using Rubber Compounds for manufacturers and consumers.

2. The group members to whom this proceeding relates ("**Group Members**") are commercial manufacturers of Rubber Compounds and/or Rubber Products who, during the period 1 July 1995 to 31 December 2001 ("**Cartel Period**"):

(a) paid at least five thousand Australian dollars (AUD\$5000.00) for Rubber Chemicals; or

(b) paid at least ten thousand Australian dollars (AUD\$10,000) for Rubber Compounds

and who:

(i) were at all relevant times ordinarily resident in or carrying on business in Australia;

(ii) are not Justices or Registrars of the High Court of Australia or the Federal Court of Australia; and

(iii) are not a Respondent in this proceeding or an entity related to such a person within the meaning of the *Corporations Act 2001*.

~~all those persons who purchased Rubber Chemicals (as defined in paragraph 3 of the Statement of Claim) or Rubber Products (as defined in paragraph 4 of the Statement of Claim) in the period 1 July 1995 to 31 December 2001 ("**the Cartel Period**") and who:~~

~~(a) were at all relevant times ordinarily resident in or carrying on business in Australia;~~

~~(b) paid at least five thousand Australian dollars (AUD\$5,000.00) in the Cartel Period for Rubber Chemicals or Rubber Products;~~

~~(c) are not Justices or Registrars of the High Court of Australia or the Federal Court of Australia; and~~

~~(d) are not a respondent or an entity related to such a person within the meaning of the *Corporations Act 2001*.~~

3. The Applicant claims that it and the Group Members have suffered loss and damage

by conduct of the Respondents in contravention of the *Trade Practices Act 1974* (“**the Act**”) as alleged in paragraphs 18 to 36 of the Amended Statement of Claim, and will suffer further loss and damage if that conduct is repeated, and claims the following relief:

- (a) Pursuant to section 21 of the *Federal Court of Australia Act 1976*, declarations that:
 - (i) each of the Respondents contravened section 45(2)(b)(i) of the Act by giving effect to the provisions of the arrangements or understandings referred to in paragraphs 14 to 17 of the Amended Statement of Claim (“**the Cartel Arrangements**”);
 - (ii) each of the Respondents contravened section 45(2)(b)(ii) of the Act by giving effect to the provisions of the Cartel Arrangements; and
 - (iii) to the extent, if at all, that any of the Respondents did not contravene the Act in the manner claimed in paragraphs 3 (a)(i) and 3 (a)(ii), each such Respondent was a person involved in like contraventions by one or more of the other Respondents within the meaning of section 75B of the Act.
- (b) Pursuant to section 82 of the Act, damages against the First, Second, Third and Fifth Respondents.
- (c) Pursuant to section 80 of the Act, an order restraining the First, Second, Third and Fifth Respondents whether by their officers, servants, agents or otherwise from:
 - (i) making or arriving at;
 - (ii) giving effect to;
 - (iii) attempting to make or arrive at or give effect to; or
 - (iv) otherwise being a person involved within the meaning of section 75B of the Act in,

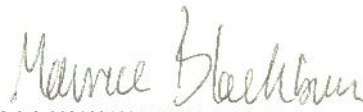
in Australia any contract, agreement, arrangement or understanding containing any of the provisions of the Cartel Arrangements.
- (d) Pursuant to section 87 of the Act, such further or other orders against the First, Second, Third and Fifth Respondents as the Court considers appropriate to compensate the Applicant and Group Members in whole or in part for the loss or damage which they suffered or are likely to suffer by the conduct of the Respondents in Australia, or to prevent or reduce the loss or damage.

- (e) Interest.
 - (f) Costs.
 - (g) Such further or other relief and orders as the Court considers appropriate.
4. The questions of law or fact common to the claims of the Group Members are as follows:
- (a) Whether the Cartel Arrangements or any of them contained an exclusionary provision within the meaning of section 4D of the Act.
 - (b) Whether the Cartel Arrangements or any of them contained provisions that had the purpose or effect, or were likely to have the effect, of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining, of the price of Rubber Chemicals supplied by the Respondents in competition with each other, within the meaning of section 45A of the Act.
 - (c) Whether, and if so how, the Respondents gave effect in Australia to the provisions of the Cartel Arrangements.
 - (d) Whether, by giving effect in Australia to the provisions of the Cartel Arrangements, the Respondents contravened section 45(2)(b)(i) and/or section 45(2)(b)(ii) of the Act.
 - (e) Whether the Second and Fifth Respondents (referred to collectively as the **“Australian Respondents”**) gave effect in Australia to any of the provisions of the Cartel Arrangements as agent for the First, Third or Fourth Respondents (referred to collectively as the **“Foreign Respondents”**).
 - (f) Whether the Australian Respondents gave effect in Australia to any of the provisions of the Cartel Arrangements at the direction or with the consent or agreement of directors, servants or agents of the Foreign Respondents within the meaning of section 84(2) of the Act.
 - (g) Whether any, and if so which, conduct in contravention of the Act by the Respondents caused prices for Rubber Chemicals in Australia:
 - (i) supplied by them or bodies corporate related to them;
 - (ii) supplied by other suppliers of Rubber Chemicals;or and the prices of Rubber Compounds Products to be higher than the prices would have been without that conduct, and to what extent.
 - (h) If conduct in contravention of the Act by the Respondents caused prices for

Rubber Chemicals and Rubber Compounds Products in Australia to be higher than the prices would have been without that conduct, the extent of the increase in prices.

- (i) The correct measure of any damages which the Respondents may be liable under the Act to pay to the Applicant and any Group Member.
 - (j) Whether any, and if so what relief, other than monetary relief, should be granted in favour of the Applicant and Group Members.
5. The Applicant does not claim interlocutory relief.

DATED: September 2007-21 November 2008



.....
Maurice Blackburn Cashman Pty Ltd
Solicitors for the Applicant

NOTICE TO THE RESPONDENTS

TO: The First Respondent	Bayer AG c/- Baker & McKenzie AMP Centre Level 27, 50 Bridge Street Sydney NSW 2000
The Second Respondent	Bayer Australia Limited c/- Baker & McKenzie AMP Centre Level 27, 50 Bridge Street Sydney NSW 2000
The Third Respondent	Chemtura Corporation c/- Mallesons Stephen Jaques Level 50, 600 Bourke Street Melbourne VIC 3000
The Fourth Respondent	Crompton Manufacturing Company Inc. c/- Mallesons Stephen Jaques Level 50, 600 Bourke Street Melbourne VIC 3000
The Fifth Respondent	Chemtura Australia Pty Ltd c/- Mallesons Stephen Jaques Level 50, 600 Bourke Street Melbourne VIC 3000

A directions hearing in this application will be heard by the Court at the time and place specified below.

If there is no attendance before the Court by you or a legal practitioner representing you, the application may be dealt with and judgment may be given or an order made in your absence.

Before any attendance at Court, you must file an appearance in the Registry.

Time and date for hearing: on 2008

Place (address of court): Federal Court of Australia
Commonwealth Law Courts
305 William Street
Melbourne Vic 3000

Dated:

The Applicant's address for service is care of its solicitors, Maurice Blackburn Cashman Pty Ltd, Level 10, 456 Lonsdale Street, Melbourne in the State of Victoria 3000.